

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 25, 2002

IN RE:

APPLICATION OF BUDGET PHONE,
INC. FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO
PROVIDE COMPETING FACILITIES-
BASED LOCAL EXCHANGE
TELECOMMUNICATION SERVICES

DOCKET NO. 02-00885

INITIAL ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

On October 17, 2002, this matter came before the Hearing Officer of the Tennessee Regulatory Authority ("Authority") upon the *Application of Budget Phone, Inc. for Authority to Provide Competing Facilities-Based Local Exchange Services* (the "Application") filed on August 22, 2002. The *Application* was made pursuant to Tenn. Code Ann. § 65-4-201 *et seq.*

LEGAL STANDARD FOR GRANTING CCN

The *Application* of Budget Phone, Inc. ("Budget Phone") was considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in applicable statutes. Tenn. Code Ann. § 65-4-201 provides, in part:

- (a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation,

and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

* * *

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.¹

Furthermore, pursuant to Tenn. Code Ann. § 65-5-212, a competing telecommunications provider is required to file with the Authority (1) a plan containing the provider's plan for

¹ Notwithstanding the existence of subsection (d), the Federal Communications Commission ("FCC") has expressly preempted the Authority's enforcement of subsection (d) pursuant to the authority granted to the FCC under 47 U.S.C. § 253(d). See *In Re: AVR, L.P. d/b/a Hyperion of Tennessee, L.P. Petition for Preemption of Tennessee Code Annotated Section 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Area*, FCC 99-100, FCC Memorandum Opinion and Order (May 27, 1999); *FCC Memorandum Opinion and Order* (January 8, 2001).

The Authority has since issued an order expanding a competing local exchange carrier's CCN to provide telecommunications services on a statewide basis including areas served by incumbent local exchange carriers with fewer than 100,000 total access lines in Tennessee. See *Order Approving Application of Level 3 Communications, L.L.C. to Amend Its Certificate of Public Convenience and Necessity*, Authority Docket No. 02-00230 (June 28, 2002).

purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

INTERVENORS

Public notice of the Hearing in this matter was issued by the Hearing Officer on October 3, 2002, pursuant to Tenn. Code Ann. § 65-4-204. No interested persons sought intervention prior to or during the Hearing.

BUDGET PHONE, INC.'S HEARING

Budget Phone's *Application* was uncontested. At the Hearing held on October 17, 2002, Budget Phone was represented by local legal counsel, H. LaDon Baltimore, Esq., Farrar & Bates, 211 Seventh Avenue, North, Suite 420, Nashville, Tennessee 37219-1823. Mr. Art Magee, Comptroller of Budget Phone, participated in the Hearing telephonically, presented testimony, and was subject to examination by the Hearing Officer. Upon Budget Phone's conclusion of proof in its case, the Hearing Officer granted Budget Phone's *Application* based upon the following findings of fact and conclusions of law:

I. APPLICANT'S QUALIFICATIONS

1. Budget Phone is a corporation organized under the laws of Louisiana on May 1, 1996, and was qualified to transact business in Tennessee on March 11, 1999.
2. The complete street address of Budget Phone's principal place of business is 6901 West Seventieth Street, Shreveport, Louisiana 71129. The telephone number is (318) 671-5000.
3. The *Application* and supporting documentary information existing in the record indicate that Budget Phone has the requisite technical and managerial ability to provide facilities-based local exchange telecommunications services within the State of Tennessee. Specifically,

Budget Phone's senior management team possesses extensive business, technical, operational and regulatory telecommunications experience.

4. Budget Phone has the necessary capital and financial ability to provide the services it proposes to offer.

5. Budget Phone has represented that it will adhere to all applicable policies, rules and orders of the Authority.

II. PROPOSED SERVICES

Budget Phone intends to offer competing facilities-based local exchange and interexchange telecommunications services to customers throughout the State of Tennessee.

III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY

Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of Budget Phone's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient technologically advanced statewide system of telecommunications services.

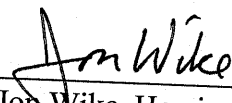
IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM

1. Budget Phone has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

2. Budget Phone has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

IT IS THEREFORE ORDERED THAT:

1. The *Application* of Budget Phone, Inc. is approved; and
2. Any party aggrieved by the Hearing Officer's decision in this matter may file a Petition for Reconsideration within fifteen (15) days from and after the date of this Order.



Jon Wike, Hearing Officer